Supreme Court, U.S.
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No. 96-1707

In The

Supreme Court of the United States

October Term, 1996

TEXAS MANUFACTURED HOUSING ASSOCIATION, INC. and A.J. WALLER, SR.,

Petitioners,

vs.

CITY OF NEDERLAND and ZONING BOARD OF APPEALS OF THE CITY OF NEDERLAND,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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Appendix A — Manufactured Housing Institute Petition for Rulemaking with Attachments 1a

Respondents request that the Court deny the Petition for Writ of Certiorari seeking review of an opinion of the Court of Appeals for the Fifth Circuit. The opinion of the Court of Appeals is reported at 101 F.3d 1095. (For the convenience of the Court, all citations to the opinion will be to the opinion attached as Appendix B to the Petition for Writ of Certiorari.) The opinion of the District Court in this case is reported at 905 F. Supp. 37. (For the convenience of the Court, all citations to the opinion will be to the opinion attached as Appendix C to the Petition for Writ of Certiorari.)

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondents respectfully oppose the Petition for Writ of Certiorari. For the most part, the Petition criticizes the Fifth Circuit Court of Appeals on holdings never in fact made. Additionally, Petitioners assert this case should be heard by this Court due to a split among the circuits in the determination of the appropriateness of summary judgment in Dormant Commerce Clause analysis, when no such split exists in the circuits.

A. Course of Proceedings and Disposition of the Case Below.

This is a case concerning the protection of the most significant investment made by most Americans, the purchase of a home. The fundamental right of citizens to own and use real property is a foundation of our democratic government. In prohibiting the taking of private property without compensation, the Constitution reflects the sanctity of private property while

at the same time recognizing the greater public interest. An exception to the Fifth Amendment "takings clause" is the valid exercise of police power. Zoning regulation is based on police power, exercised in the promotion of public health, safety, morals or welfare. Zoning regulation is also a recognized tool of community planning, allowing municipalities, in the exercise of their legislative discretion, to restrict the use of private property for the public good.

The City of Nederland determined mobile homes scattered haphazardly throughout a city have a significant detrimental effect on the property values of site-built homes in the neighborhood. In order to safeguard the investments of its citizens, the City of Nederland passed Ordinance 259. Ordinance 259, a land use ordinance, restricts the placement of "trailer coaches" within the city limits to trailer home parks and trailer home subdivisions. The term "trailer coach" is defined in the ordinance as:

> . . . [A] transportable, single-family dwelling unit which is or may be mounted on wheels suitable for year-round occupance and containing the same water supply, waste disposal and electrical conveniences as immobile housing.

This definition clearly encompasses HUD-Code Manufactured Homes and any other type of mobile home.

On March 11, 1992, Petitioner, A. J. Waller, Sr., submitted a written request to the City of Nederland for a permit to install a mobile home on property owned by him within the city limits of Nederland, Texas. The City denied his request pursuant to Ordinance 259. Following the City's denial of a permit, Mr. Waller filed a Declaratory Judgment action in State District Court in Beaumont Texas, styled *Jake Waller, Sr. v. City of*

Nederland, Texas, Cause No. D-144,168, in the 136th Judicial District of Jefferson County, Texas. On April 15, 1994, the court signed a Final Declaratory Judgment stating the City of Nederland was entitled to enforce its ordinances, including Ordinance 259. Mr. Waller then submitted another request for a permit to install a HUD-Code mobile home on the same property within the city limits. This request was denied. In June of 1994, Petitioners filed a Complaint and Petition for Writ of Certiorari in the Eastern District of Texas, Beaumont, Division, seeking to have Ordinance 259 held unconstitutional based on various federal and state constitutional grounds. On September 7, 1995, the District Court entered an Order granting Respondents' Motion for Summary Judgment. Petitioners then appealed the District Court's granting of summary judgment to the Fifth Circuit Court of Appeals. The Fifth Circuit affirmed the District Court's holding.

B. Correction of Misstatements in the Petition

Pursuant to the United States Supreme Court Rule 15.1, Respondents bring the following misstatements of facts contained in the Petition to the Court's attention.

Petitioners misrepresent to this Court as fact that "A modular home and a similarly equipped HUD-Code manufactured home look virtually identical in terms of their outward visual characteristics. The difference lies in the construction standard to which each is built." (Petition at 3 n.1). Petitioners fail to site this Court to any supporting evidence of this statement in the record below. While this has been the Petitioners' position, the record below fails to support their contention. Additionally, HUD-Code manufactured homes have a permanently affixed chassis and are mobile whereas modular housing has no such distinguishing feature.

Additionally, Petitioners also misrepresent to the Court Ordinance 259 prohibits placement of "trailer coaches" anywhere in the city except in so-called "trailer parks" (Petition at 2) and later state a "ban" on HUD-Code manufactured homes exists under the City of Nederland ordinance. (Petition at 12 n.7). Ordinance 259 does not ban the placement of HUD-code manufactured homes within the city limits of Nederland. The ordinance allows the placement of such homes not only in "trailer parks" but also allows placement in subdivisions for such housing with land under multiple ownership.

REASONS FOR DENYING THE WRIT

1. Petitioners argue a question presented by the Fifth Circuit's holding is whether intent is relevant in a preemption analysis. (Petition at 5). This is not a question which is presented by the holding below. The preemptive intent of Congress for the National Manufactured Housing and Safety Standards Act is expressly set out in § 5403(d) of the Act itself. The preemptive language of the statute clearly precludes states and municipalities from imposing construction and safety standards upon mobile homes manufactured after 1975, which differ in any respect from those developed by HUD. The Fifth Circuit did not state an unintentional encroachment on the will of Congress is not a violation of the federal preemption doctrine. To the contrary, the court states the record demonstrated Ordinance 259 is a land use ordinance which regulates the placement of these homes in order to preserve property values and does not, either intentionally or unintentionally, establish safety or construction standards.

2. Petitioners also argue the ruling on their Dormant Commerce Clause claim is contrary to Supreme Court precedent. Petitioners state the Fifth Circuit's holding establishes intent as a necessary element of a claim for municipal action which

violates the Dormant Commerce Clause. (Petition at 5). This is a misstatement of the Fifth Circuit's holding. The Fifth Circuit held it was not clear if Petitioners had demonstrated Ordinance 259 had *any* effect on interstate commerce whatsoever. The court determined the record established Ordinance 259 had, if any, only an incidental effect on interstate commerce and, thus, the District Court was correct to apply the balancing test outlined in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970).

3. Petitioners argue the Fifth Circuit opinion presents an inter-circuit conflict and summary judgment was not appropriate on the Dormant Commerce Clause claim. However, a review of the case law does not support the Petitioners' contention the Seventh, Eighth, and Tenth Circuits have held the *Pike* analysis is inappropriate for summary judgment. Petitioners have mischaracterized the various courts' holdings. These courts have held the records in those particular cases did not support a motion for summary judgment under a *Pike* analysis. The court in the Fifth Circuit correctly determined the Petitioners did not produce evidence sufficient to create a genuine issue of material fact with respect to the whether the burden on interstate commerce clearly exceeds the local benefits, and the District Court did not err in granting summary judgment on this claim.

I.

THE FIFTH CIRCUIT'S HOLDING WAS CORRECT AND DOES NOT REQUIRE A FINDING OF INTENTIONAL VIOLATION IN ORDER TO FIND A MUNICIPALITY'S ACTIONS ARE PREEMPTED BY FEDERAL LAW.

This Court's jurisprudence under the Supremacy Clause of the United States Constitution identifies both express and implied forms of federal preemption, which are "compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88, 112 S. Ct. 2374, 2383, 120 L. Ed. 2d 73 (1992). Congress has expressly defined the preemptive reach of Title 42 U.S.C. § 5403(d):

> Whenever a Federal manufactured home construction and safety standard established under this chapter is in effect, no state or political subdivision of a state shall have authority to either establish, or continue in effect, with respect to any manufactured home covered, any standard regarding construction or safety applicable to the same aspect of performance of such manufactured home which is not identical to the Federal manufactured home construction and safety standard.

The preemptive language of the statute clearly precludes states and municipalities from imposing construction and safety standards upon manufactured homes that differ in any respect from those developed by HUD. Additionally, the Legislature in Title 42 U.S.C. § 5403(h) specifically excludes from coverage:

> any structure which the manufacturer certifies, in a form prescribed by the secretary, to be: (1) designed only for erection or installation on a site built permanent foundation, (2) not designed to be moved once so erected or installed, (3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a state or local modular code recognized as generally equivalent to building codes for site built housing. . . .

Thus the federal statute itself makes a distinction between HUD-Code homes and modular housing. Modular housing is not covered by the federal statute. Petitioners contend the only difference between HUD-Code manufactured homes and modular homes are the construction standards to which each is built. The permanent chassis and transportable nature of HUD-Code manufactured homes readily distinguishes them from modular housing.[1] The fact the city requires modular housing to comply with the local building code does not mean the city's restriction of HUD-Code homes is based on their safety or construction standards.

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1. Under federal law, a home is a manufactured home only if it contains a permanent chassis and is designed to be used with or without a permanent foundation. In 1992, the Manufactured Housing Institute (MHI) asked the Department of Housing and Urban Development to administratively remove the permanent chassis requirement. *HUD Docket No. R-92-1610. Manufactured Housing Institute's Petition for Rulemaking.* (Appendix A). HUD declined, reasoning that MHI's proposal was contrary to the intent of Congress and would, if adopted, expand the Act to cover other forms of housing that are constructed off site but are not designed for permanent transportability. Other types of homes which are constructed off site, but are designed to be moved only from the construction site to the site where they are to be permanently situated are not regulated under federal law. One type of such is modular housing.

The Fifth Circuit held Ordinance 259 regulates the placement and permitting of trailer coaches for the "purpose of protecting property values and does not expressly link its provisions in any way to local safety and construction standards." (Petition Appendix B at 11a). Additionally, the court found the ordinance did not, in effect, impose construction and safety standards on the mobile homes. The court pointed out the record failed to demonstrate HUD-Code homes would be permitted in areas as long as they complied with local safety and construction codes. (Petition Appendix B at 11a). Additionally, the court stated the Petitioners failed to cite evidence "that identifies the actual requirements of the 'local building code' that HUD-Code manufactured homes fail to satisfy under the ordinance." (Petition Appendix B at 11a). Therefore, Ordinance 259 did not encroach upon an area expressly reserved to the federal government by Title 42 U.S.C. § 5403(d). In fact, the ordinance allows placement of mobile homes, including HUD-Code homes, not only in mobile home parks but also subdivisions created expressly for such housing.

There is no indication in the Federal Act that Congress has deprived the local governments of their traditional zoning and police powers by its enactment of the Act. Nothing in the legislative history of the Act would demonstrate such a goal of Congress. According to Congress, the purposes of the Act "is to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents and to improve the quality and durability of manufactured homes." 42 U.S.C. § 5401. The Act undoubtedly represents consumer safety legislation. A city may not restrict placement of mobile homes covered under the act based solely on the city's safety code. The record below established the City of Nederland's ordinance does not require HUD-Code manufactured homes to meet the city's building codes. Such housing is restricted to mobile home parks and

mobile home subdivisions without regard to the standards to which they are constructed.[2] Thus, the City's ordinance regulates the location of HUD-Code manufactured homes and not the standards for their construction, and is not preempted by federal law. The City of Nederland's exercise of its police power through a land use ordinance, not tied to any safety requirement, is clearly not preempted by the Federal Act.

Petitioners are incorrect in their assertion the Fifth Circuit's decision is in conflict with the Eleventh Circuit's decision in *Scurlock v. City of Lynn Haven Fla.*, 858 F.2d 1521 (11th Cir. 1988). In *Scurlock*, the court struck down, on federal preemption grounds, a city zoning regulation which required homes within a specific residential zone to meet the city's building codes. In that case, the only reason given by the city for prohibiting the Plaintiff from installing a mobile home in the specified zone was the mobile home's non-compliance with the city's building code. Under the City of Lynn Haven's ordinance, a mobile home that was built to meet the city's building codes would have been permitted, while one that was built to federal standards would not. After concluding that such regulation was preempted by federal law, the court went on to state, "undoubtedly [the city] could limit zone R-AA to conventionally built residences and exclude mobile homes." (Citations omitted). *Id.* at 1525. Thus, the court in *Scurlock* recognized a city could restrict the placement of mobile homes and not encroach on an area reserved by Congress. To require HUD-Code manufactured mobile homes to comply with the local building code was in direct conflict with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §§ 5401-5426, which expressly prohibits state and local governments from

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2. Petitioners cited with favor in the courts below the Texas Manufactured Housing Standards Act, Tex. Rev. Civ. Stat. Ann. Art. 5221f, which specifically allows cities to restrict installation of HUD-Code manufactured homes to "areas determined appropriate by the city."

establishing standards for safety and construction of manufactured homes which are different than federal standards. In contrast, the record below establishes the Fifth Circuit correctly found the City of Nederland's Ordinance 259 is a land use ordinance which regulates the placement of HUD-Code manufactured mobile homes within the city limits in order to protect property values. (Petition Appendix B at 11a).

Congress has expressly defined the preemptive reach of 42 U.S.C. § 5403. The preemptive language precludes states and municipalities from imposing construction and safety standards upon manufactured homes that differ in any respect from those developed by HUD. Ordinance 259 as applied by the City of Nederland regulates the placement and permitting of mobile homes for the purpose of protecting property values. Petitioners failed to present any evidence which would establish Ordinance 259 imposed construction and safety standards upon manufactured homes that differed in any respect from those developed by HUD. Ordinance 259 clearly allows the placement of these manufactured homes within mobile homes parks and subdivisions created expressly for such housing within the city limits of Nederland. The record below established the City of Nederland's ordinance did not require such manufactured homes to meet the city's building codes in order to be placed within the city limits. The ordinance merely restricted the placement of the homes in order to protect property values. The Fifth Circuit was correct in determining this case "is significantly unlike *Scurlock*." (Petition Appendix B at 10a). Accordingly, the Fifth Circuit was correct in upholding the District Court's granting of Respondents' summary judgment on the issue of federal preemption.

II.

THE FIFTH CIRCUIT'S HOLDING DOES NOT REQUIRE PROOF OF PROTECTIONIST INTENT AND PROPERLY FOUND NO VIOLATION OF THE DORMANT COMMERCE CLAUSE.

Contrary to the Petitioners' contentions, the Fifth Circuit's holding does not establish a requirement of a showing of protectionist intent under a claim for violation of the Dormant Commerce Clause. The constitutional grant to Congress, under the Commerce Clause, of the power to regulate commerce among the several states necessarily implies the subordination of the states to that power. This grant to Congress has established the immunity of interstate commerce from the control of the states. It would be violative of the Dormant Commerce Clause for a state to burden interstate commerce to the extent of disrupting the required uniformity. (*See* 15A Am. Jur. 2d, *Commerce* § 11).

In establishing the Dormant Commerce Clause, this Court has distinguished between two effects state or local regulations may have on interstate commerce, applying a different standard to each: (1) the incidental burden; and (2) an affirmative discrimination. *Maine v. Taylor*, 477 U.S. 131, 138, 106 S. Ct. 2440, 2447, 91 L. Ed. 2d 110 (1986). Negatively affecting interstate commerce is not the same as discriminating against interstate commerce. This Court has defined "discrimination" in this context to mean "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems Inc. v. Oregon Dep't Envtl. Quality*, 511 U.S. 93, 114 S. Ct. 1345, 1350, 128 L. Ed. 2d 13 (1994).

Contrary to Petitioners' assertion, this Court has decided cases in which the differential treatment was alleged to be

motivated by reasons other than protectionist intent. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981), illustrates the way the Commerce Clause cases approach legislation ostensibly targeted at a domestic problem. In *Clover Leaf Creamery Co.*, the Court upheld a Minnesota law prohibiting the sale of milk in nonreturnable rigid or semi-rigid containers. The law was designed to ease the problem of solid waste disposal, which had been exacerbated by widespread use of nonreturnable milk containers. Although the Court acknowledged the Minnesota pulpwood industry would benefit from the law (as a result of the increased use of paper cartons), while a corresponding burden fell on out-of-state producers of plastic resin (the raw material from which the prohibited containers were produced), the Minnesota law was not a disguised import prohibition. It thus merited evaluation under the Court's balancing test. Performing that evaluation, the Court ruled the burden on out-of-state products was outweighed by the in-state benefits. In so ruling, the Court gave credence to the environmental benefits of the legislation and concluded any discriminatory effect upon out-of-state producers was attenuated.

The Fifth Circuit found the facts in this case closely resemble those in *Clover Leaf Creamery Co.* (Petition Appendix B at 14a). The Petitioners attempted to distinguish *Clover Leaf* by contending modular homes, unlike the product in *Clover Leaf Creamery Co.*, are produced by only in-state suppliers. However, the Fifth Circuit correctly found "Plaintiffs have not demonstrated that whatever mode of housing is built in lieu of HUD-Code manufactured homes, it will be provided by in-state suppliers." (Petition Appendix B at 20a).

Petitioners imply the Fifth Circuit found Ordinance 259 did not affirmatively discriminate against HUD-Code manufactured homes because all such homes, "regardless of place of

manufacture, are excluded" and then determined this finding was "dispositive of the discrimination question." (Petition at 11 n. 5). However, as is clearly set out by the Fifth Circuit's opinion, as well as the District Court's opinion, the Court applied the balancing test outlined in *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970), after determining the facts demonstrated Ordinance 259's effect on interstate commerce was only incidental. Consequently, a two-step approach to determine the constitutionality of legislation under the Dormant Commerce Clause is proper. When an ordinance does not directly discriminate against interstate commerce, the Court applies a rational basis review balancing test. *Id.*

Petitioners have argued Ordinance 259 discriminates against HUD-Code manufactured homes, which they characterize as an "out-of-state product," while permitting modular homes, which they characterize as an "in-state product." Ordinance 259 does not absolutely prohibit mobile homes nor does it place any restrictions on out-of-state modular housing. The federal statute itself differentiates between these two types of housing. The District Court and the Fifth Circuit recognized the Petitioners' own evidence demonstrated the "markets for modular homes and for HUD-Code manufactured homes, though overlapping, are basically distinct". (Petition Appendix B at 18a). In the case at bar, the Fifth Circuit stated, "There are two markets at work, and the Plaintiffs have not presented evidence demonstrating a restriction on HUD-Code manufactured homes will result in a corresponding increase in sales of modular homes." (Petition Appendix B at 18a). Citing both *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978), and *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 101 S. Ct. 715, 66 L. Ed. 2d 659 (1981), the Fifth Circuit held the District Court was correct in holding Ordinance 259 did not discriminate against interstate commerce, but regulated evenhandedly, and upheld the District Court's finding

Ordinance 259 was thus subject to the balancing test. The Fifth Circuit held the District Court correctly applied the *Pike* balancing test to the facts in this case. The Fifth Circuit also properly recognized "[t]he crucial inquiry . . . must be directed to determining whether [the statute] is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624, 98 S. Ct. 2531, 2535, 57 L. Ed. 2d 475 (1978). (Petition Appendix B at 13a). The record below clearly demonstrated Ordinance 259 represented a legitimate local purpose, preservation of property values, and the Petitioners failed to demonstrate an excessive burden on interstate commerce compared to this local interest. The Fifth Circuit's opinion cannot reasonably be interpreted to require proof of protectionist intent, and properly found no violation of the Dormant Commerce Clause.

III.

THE FIFTH CIRCUIT CORRECTLY FOUND THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT.

Petitioners claim there is a split among the Courts of Appeals in their approach to applying the balancing test outlined in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), at the summary judgment level. (Petition at 12). In support of this argument, Petitioners cite three cases from the Seventh, Eighth, and Tenth Circuits which they contend demonstrate these circuits have found the *Pike* test to be inappropriate for summary judgement. However, a careful reading of these cases demonstrates these circuits have not held summary judgment to be inappropriate under a Dormant Commerce claim *Pike* analysis. Instead, these courts have held the records in those particular cases did not support a motion for summary judgment.

In *Cotto Waxo Company v. Williams*, 46 F.3d 790 (8th Cir. 1995), out-of-state manufacturers of petroleum-based compounds brought an action against the Commissioner of Minnesota Pollution Control Agency, alleging the Minnesota statute, which prohibited the sale of petroleum-based sweeping compounds, violated the Dormant Commerce Clause. The District Court held the local benefits of the law outweighed the law's burden on interstate commerce, and granted summary judgment in favor of the state. The Eighth Circuit reversed, holding although the statue did not affirmatively discriminate against interstate commerce, it was still subject to the *Pike* balancing test. Although the court attempted to apply the test, it was unable to do so because "neither side of the scale holds an impressive amount of weight. The record reflects no great burden on interstate commerce . . . Similarly, the record reflects no great benefit to the public as a result of the Act." *Id.* at 94, 95. In contrast, in this case, the significant local interest which is protected by Ordinance 259 is the maintenance of property values within the City of Nederland. The Fifth Circuit correctly points out the burden on interstate commerce, if any, is incidental. The City of Nederland's ordinance does not prohibit the placement of mobile homes in the city altogether. These homes may be bought, sold, and placed within the city. Ordinance 259 simply restricts the placement of these homes to mobile home parks and mobile home subdivisions in order to maintain the property values of the area. The commerce clause protects the interstate market, not particular interstate firms, from burdensome regulations. *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91 (1978). The Petitioners failed to present any evidence that whatever mode of housing is built in lieu of HUD-Code manufactured housing will be provided by in-state suppliers. Thus, the record below does not demonstrate a burden on interstate commerce which is excessive compared to the local interest.

The Petitioners also cite *Blue Circle Cement, Inc. v. Board of County Commissioner, etc.*, 27 F.3d 1499 (10th Cir. 1994), in support of their argument. In *Blue Circle Cement, Inc.*, the District Court failed to apply the *Pike* test at all once it determined the relevant statute did not affirmatively discriminate against interstate commerce. In that case, Blue Circle, an Alabama corporation with its principal place of business in Georgia, operated a quarry and cement manufacturing plant in Rogers County, Oklahoma. To reduce the cost of heating its kilns, Blue Circle sought to convert the hazardous waste fuels which were derived from the blending of various industrial wastes. The Board of County Commissioners informed Blue Circle the county ordinance required a conditional use permit for the burning of hazardous waste fuels. Blue Circle filed suit alleging the ordinance was preempted by federal law and was violative of the commerce clause. The District Court issued a summary judgment order in favor of the board holding the Board's zoning ordinance was not preempted by federal law; the ordinance did not violate the commerce clause, and the ordinance was constitutional as applied to Blue Circle. Far from holding the *Pike* analysis was inappropriate, the Tenth Circuit criticized the District Court for its failure to apply the test. In that case, the court held there was no evidence hazardous waste fuels would present any significant health or safety hazard, nor was there any evidence the ordinance's requirements were related in any reasonable way to any hazard the hazardous waste fuels might present. The court then went on to apply the test itself and, based on its application of the facts to the factors identified in *Pike*, determined the record was inadequate to support a summary judgment.

The Petitioners further cite *National Solid Waste Management Ass'n v. Meyer*, 63 F.3d 652 (7th Cir. 1995). In that case, the Wisconsin statute provided both in-state and out-of-state waste generators were barred from dumping listed

materials in Wisconsin's landfills unless they resided in a community that had adopted an "effective recycling program." In *National Solid Wastes Management Ass'n,* the Seventh Circuit did not hold summary judgment inappropriate because use of the *Pike* analysis was inappropriate. The Solid Waste Management Trade Association and Landfill Owners and Operators filed a 42 U.S.C. § 1983 action against the Wisconsin Department of Natural Resources, challenging the constitutionality of Wisconsin's recycling statute. The court held the *Pike* test was inappropriate because the facts in that case demonstrated the recycling statute controlled conduct of those engaged in commerce occurring wholly outside the state and, thus, directly regulated interstate commerce in violation of the commerce clause. The court went on to state even if the statute did not directly discriminate against interstate commerce, it would be subject to the *Pike* analysis and would not "pass muster," because the burden imposed on interstate commerce was excessive in relation to the local interest served by the statute.

Thus, the cases cited by the Petitioners do not support their contention there is a split among the circuits as to the application of the *Pike* analysis in a summary judgment context.

In comparing HUD-Code manufactured homes with modular homes, the Fifth Circuit found "there are two markets at work, and Plaintiffs have not presented evidence demonstrating that restriction on HUD-Code manufactured homes will result in a corresponding increase in sales of modular homes." (Petition Appendix B at 18a). Noting the record demonstrated Fannie Mae guidelines require an appraiser, when appraising a conventional site-built home, to mention in the report the presence of any mobile homes or HUD-Code manufactured homes in the neighborhood, the Fifth Circuit properly determined Ordinance 259 has only an incidental effect,

if any, on interstate commerce and the District Court was correct in applying the balancing test outlined in *Pike*. (Petition Appendix B at 19a, n.9). Petitioners further failed to demonstrate that whatever mode of housing was built in lieu of HUD-Code manufactured homes would be provided by in-state suppliers. (Petition Appendix B at 20a). Accordingly, the record demonstrated only a slight burden, if any, upon interstate commerce clearly not excessive to the legitimate local interest of preserving property values. In summary, the Fifth Circuit properly upheld summary judgment by the District Court because the record did not raise a genuine issue to support a burden of Ordinance 259 on interstate commerce excessive to the local benefit of said ordinance.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A — MANUFACTURED HOUSING INSTITUTE PETITION FOR RULEMAKING WITH ATTACHMENTS

Mr. Jerry C. Connors, President
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Dear Mr. Connors:

This is in further response to your letter of June 17, 1992 to Mr. Francis A. Keating II, the Department's General Counsel. Your communication petitioned for a rulemaking proceeding in which HUD would propose recommended modifications to the Manufactured Housing Construction and Safety Standards regulations.

As Mr. Keating indicated in his June 26, 1992 letter to you, your request for modifications to four transportation definitions in 24 CFR 3280, Subpart J has been treated as a petition for rulemaking, and has been the subject of a policy review by my office, as well as discussions with the General Counsel and his staff.

Following this review and consultation, the Department has concluded that the initial issue presented by your petition is whether the Department has the legal authority to amend its regulations implementing the National Manufactured Housing Construction and Safety Standards Act of 1974 to define the term "chassis" in the manner you have proposed. Unless that question can be answered affirmatively, the determination whether sound policy reasons exist for the requested modification of definitions contained in the regulations does not really arise.

Appendix A

The Department has applied the plain meaning of the Act in interpreting the Congress' use of the term "permanent chassis", and has concluded that MHI's proposed definition of "chassis" would not be consonant with the statute. Moreover, adoption of MHI's proposal would have the effect of giving the Department jurisdiction over all modular housing — thereby extending the area of responsibility assigned to HUD by the Act. Because the Department believes that it lacks authority to extend or modify its regulatory jurisdiction in this manner, HUD has concluded that accomplishing your desired purpose would require legislative action.

Background

The Department considers the essential part of the chassis to be the frame, which generally consists of two steel I-Beams running the length of the manufactured home, on which the body of the home is constructed and on which the running gear and wheels, lights and coupling mechanism are attached. Your organization's proposal is justified, in part, by the proposition that the removal of the transportation frame (i.e. the steel I-Beams) will facilitate the siting of the home on a permanent foundation. However, 24 C.F.R. § 3280.904(a) already contains a note providing for frames that are integrated into the home's structure and, thus, facilitate siting on a permanent foundation without the removal of the chassis. That note states the following:

> While the majority of manufactured homes utilize a fabricated steel frame assembly, upon which the manufactured home structure is constructed, it is not the intent of this standard to limit innovation. Therefore, other concepts, such as integrating the frame

> function into the manufactured home structure, are acceptable provided that such design meets the intent and requirements of this part.

The Department has approved designs, such as the Lindsey Floor System, which integrate the frame into the home's structure. The Lindsey Floor System is currently being used by several manufacturers.

Your proposal essentially would redefine the floor of the manufactured home as the permanent chassis, and would take what the Department now considers to be the permanent chassis and redefine it as a removable transportation frame.[1]

In 1990, MHI and the industry supported a major rewrite of the Act introduced by Congressman John Hiler (3rd District of Indiana). The "Hiler Amendment" to the Affordable Housing Act of 1990 (HR 1180) carried a provision striking the phrase ". . . built on a permanent chassis. . ." from the Act's definition of manufactured home. The Amendment passed the House but was defeated in the Senate. MHI's Petition for Rulemaking suggests that the Department has the authority to do what the Congress has not done — allow for the removal of the chassis.

The Proposal Conflicts with the Plain Meaning of the Statute.

The use of the term "mobile" in the original title of the Act implies that the intent was that these homes could be

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1. Nothing in the Act, the Manufactured Home Construction and Safety Standards or the Regulations precludes manufacturers of manufactured homes from building homes with removable chassis. However, if the manufacturer does so, the home will be outside the jurisdiction of the Act.

permanently transportable. Congress made no distinction for permanently sited manufactured homes. In fact, the Act was intended to cover all structures that are "*transportable,* [that meet the size requirements and that are] built on a permanent chassis and designed to be used as a dwelling *with or without* a permanent foundation." 42 U.S.C. §5402(6) (emphasis added). MHI's proposal seeks to allow manufacturers to design and construct homes that would not be "transportable" after they are installed on a permanent foundation.

The District Court for the District of Columbia, in the only case specifically to address the removable chassis issue, held that "[t]o permit a manufacturer to overbuild the underside of [a manufactured] home, transport it on a traditional metal frame, and then discard the transportation frame . . . would defeat the purpose of the National Manufactured Housing Act to create 'transportable' homes." *Association For Regulatory Reform v. Pierce,* 670 F.Supp. 1041, 1051 (D. D.C. 1987), *affirmed in part and vacated in part,* 849 F.2d 649 (D.C. Cir. 1988).[2]

Congress did not define "permanent chassis," and the legislative history of the Act does not provide any insight into what Congress specifically meant by "permanent chassis." In statutory interpretation, the courts have held that the plain meaning of legislation should be conclusive, except in rare cases in which the literal application of a statute would produce a

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2. The appeals court, in *A.R.R. v. Pierce,* refused to render a decision regarding the trial court's opinion of HUD's interpretation of "permanent chassis." Instead, they vacated that portion of the trial court's ruling stating that the court "shall patiently await a concrete case of HUD disapproval of a particular design before embarking upon a judicial expedition aimed at measuring the fidelity of the agency's specific regulatory action to the statutory and regulatory regime that governs the arcane world of manufactured housing." 849 F.2d at 656.

result demonstrably at odds with the intention of its drafters. *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989), *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

Webster's Dictionary defines "chassis" as:

> a: the frame upon which is mounted the body (as of an automobile or airplane), . . . or the roof, walls, floors, and facing (as of a building) b: the frame and working parts as opposed to the body (as of an automobile). . . .

The American Heritage Dictionary defines "chassis" as:

> The rectangular steel frame, supported on springs and attached to the axles, that holds the body and motor of an automotive vehicle.

Given these standard definitions of the word chassis, the Department obviously employed the "plain meaning" of the term when it defined chassis and frame for the purposes of the Standards. These definitions have remained in the Standards for seventeen years, with no indication from the Congress that the Department has misinterpreted the statutory intent. Moreover, the Department's literal application of the term "permanent chassis" — in requiring that the essential parts of the chassis remain on the manufactured home — is certainly not at odds with the Congress' clear intention that manufactured homes be "transportable."

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The Proposal is Contrary to the Intent of the Congress because it would Expand the Authority of the Act to Include all Modular Housing:

The Act was amended in 1977 to exclude from its coverage certain modular homes that might otherwise meet the definition of a manufactured home. The Act's provision excluding modular housing, §604(h), 42 U.S.C. §5403(h), and the provision's legislative history indicate that the Congress wanted to limit the Department's authority, and to retain a clear line between manufactured and modular homes. In introducing Amendment 363 to the Housing and Community Development Act of 1977 (now §604(h) of the Act), Senator Proxmire stated:

> [T]his amendment would meet a problem that has been of great concern to a number of [modular] homebuilders . . . that is, the building of homes by prefabricating them, doing most of the building in factories, and then transporting the house to the site to have it erected there. . . . Unfortunately, this kind of modular construction has been pulled under the wing of the Mobile Home Construction and Safety Standards Act. That was certainly not the intention of the Congress. As one of the authors of that bill, I certainly had no intention of including modular homes in this particular category.
>
> 123 Cong. Rec. 17695, 17818 (June 7, 1977).

Senator Proxmire indicated further, in his remarks on the

Senate floor, that he had discussed the matter with the Secretary of HUD and read a letter he had received from the Secretary. The Secretary's letter stated, in part, that:

> A small percentage of modular structures is constructed and transported in such a way as to come within the definition of "mobile home" set out in section 603(6) of the 1974 Act. To the extent that modular units meet that definition, HUD's position has been that the statute confers regulatory authority over them. It was the Department's view that Congress did not intend to regulate any part of the modular housing industry pursuant to Title VI. Accordingly, HUD has exempted, by interim regulation, those modular homes meeting the definition of mobile homes from the Title VI standard.
>
> *Id.* (Proxmire, reading the Secretary's June 3, 1977 letter).

The regulation to which the Secretary was referring was published on June 21, 1976. As shown by the following, the 1976 rule's preamble further delineates the problem Senator Proxmire was attempting to address by introducing Amendment 363:

> [I]t has come to the attention of the Department that some structures that have traditionally been considered to be modular homes are now sometimes being manufactured with and transported on

> permanent chassis similar to those used to transport mobile homes. The Department has carefully examined the Act and its legislative history and has concluded that while it may not have been the intent of Congress to include this new type of modular housing in the definition of "mobile home," this statutory definition cannot fairly be interpreted to exclude such modular homes transported on permanent chassis.
>
> 41 Fed. Reg. 24968 (June 21, 1976).

Clearly, the legislative history of §604(h) indicates that the Congress intended to exclude from the authority of the Act that small portion of modular housing that was constructed and transported in such a way as to come within the definition of a manufactured (mobile) home. Indeed, Senator Proxmire's comments assert that the Congress never intended for *any* modular housing to come under the authority of the Act.

By adopting MHI's proposed definition of chassis, modular homes would become subject to the regulatory authority of the Department under the Act. Under MHI's proposal, a modular home's floor would be considered a chassis, thus bringing the modular home within the Act's definition of a manufactured home. Consequently, a modular home manufacturer would be required either to build to the Standards, or to comply with the requisites of §604(h) and seek exclusion from the Act for every modular home the manufacturer built. MHI's proposal is therefore contrary to the intent of the Congress in enacting the 1977 amendment. The regulations the Department issues must be within the powers conferred by the Congress. Accordingly,

the Department has concluded that MHI's proposal would require legislative action and is beyond the authority of the Department to accomplish by means of rulemaking.

For the foregoing reasons, the Manufactured Housing Institute's Petition for Rulemaking, Docket No. R-92-1610, is denied.

Very sincerely yours,

s/ Arthur J. Hill
Arthur J. Hill
Assistant Secretary for Housing —
Federal Housing Commissioner

Appendix A

Manufactured Housing Institute

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June 17, 1992

Mr. Francis A. Keating II
General Counsel
Department of Housing and Urban Development
451 7th Street, S.W., Room 10214
Washington, D.C. 20410

Dear Mr. Keating:

Thank you for taking the time to meet with Dave Barrett, Lois Starkey and me last week. We appreciate your willingness to examine MHI's request that HUD propose regulations to authorize the use of removable transportation frames for manufactured homes.

As we mentioned, we raised this issue at a meeting last December with Secretary Kemp. Following that meeting, we met with former Deputy Assistant Secretary for Single Family Housing Juan Acosta to discuss this issue and later submitted detailed information. Subsequently, we met with David Nimmer, the Director of the Manufactured Housing Program, to explain our position further. After some discussion with his staff, Mr. Nimmer asked us to provide him with the legal rationale underlying MHI's position.

While it seems only natural that an issue that has been the subject of lengthy and intense debate and even judicial

consideration would only yield to a legal solution, we believe that the solution to this problem will flow from the logic of changed circumstances rather than legalities. At the time of authorizing legislation was debated and ultimately approved, removal of the transportation frame was not an issue. All manufactured homes were designed with a transportation frame that would provide stability during transportation and also on site.

Not long after that, the innovation called for in the enabling Act led manufacturers to seek designs that would allow manufactured homes to be sited in a more traditional way, that is, at ground level and perhaps over a basement. As we have pointed out in the past, this innovation was approved and even encouraged by HUD at various times until August of 1986 when a letter was issued from the Department curtailing the practice as a violation of the law.

We at MHI believe that the focus of this debate has been misplaced. For many years industry has argued that the law should be interpreted to allow for the removal of the transportation frame and the regulations appropriately modified. Consistently, the Department has relied that the law requires manufactured homes to have a permanent chassis and that the transportation frame is an integral part of that. That debate, as we discussed last week, has raged on for several years and could go on for many more.

We would urge you to take a different approach. Manufactured homes with their transportation frames removed can be a viable addition to this country's housing stock. There are no health or safety problems. So rather than finding reasons to eliminate this form of housing, we strongly urge you to take

the lead by recognizing that building technology has changed since the inception of the HUD Code and modifying current regulations to permit the removal of transportation frames. This can be done easily enough by recognizing that the modified substructure of the manufactured home is the permanent chassis.

As we suggested at the meeting last week, this issue should be the subject of a formal rulemaking procedure and in MHI's comments on HUD's proposed revisions to the National Manufactured Home Construction and Safety Standards (MHCSS) submitted on May 22, 1992, we recommended that HUD modify four transportation definitions on Subpart J, Sections 3280.902(a), (b), (c) & (f) and 3280.904(a) & (b) of the MHCSS. A copy of our proposal is enclosed.

We look forward to hearing from you soon, and please feel free to contact me if we can be of further assistance.

Sincerely,

s/ Jerry C. Connors
Jerry C. Connors
President

Enclosures

cc: Bud Albright
Peter Race

Appendix A

RATIONALE FOR MHI's REQUEST FOR RULEMAKING ON THE REMOVABLE TRANSPORTATION FRAME

Based on our review of the National Manufactured Housing Construction and Safety Standards (NMHCSS) Act of 1974, the legislative history and the regulations implementing the Act (24 CFR Part 3280 et seq.), it is MHI's assertion that HUD has the authority to change its current regulations to authorize manufactured homes to be designed and constructed with a removable transportation frame.

Not only does the legal authority exist, in addition, MHI's proposal is also in line with HUD's objectives to remove barriers to affordable housing and to expand home ownership opportunities for low-and-moderate income Americans. It would also certainly be consistent with HUD's goals to improve the quality and durability of manufactured homes, and to encourage innovation in manufactured housing design.

In addition, our proposal meets the requirements of President Bush's initiative to examine and eliminate federal regulations that impede growth and recovery.

HUD Has the Statutory Authority to Permit Manufactured Homes to be Designed and Constructed with Removable Transportation Frames.

There is no statutory provision against allowing the removal of the transportation frame. The Act defines a manufactured home as a structure ". . . which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. . . ." (42

U.S.C. 5401 et. seq.). The statute does not define permanent chassis.

The Manufactured Home Construction and Safety Standards (Part 24 CFR 3280.902) define the terms "chassis" and "frame". The regulations do not define "permanent chassis".

The statute does not prohibit HUD from amending its current regulations to provide for the removal of the transportation frame for permanently sited manufactured homes.

HUD Should Amend the MHCSS Regulations to Authorize the Design and Construction of Manufactured Homes with Removable Transportation Frames

MHI proposes that the Department revise Sections 3280.902 and 3280.904 to permit the removal of the transportation frame component of the home after transport, provided that the permanent fabricated substructure is properly buttressed in the approved design. A home's chassis is defined as the permanent fabricated substructure and the transportation platform may be designed to be removed for siting a home on a permanent foundation. Those homes will have been engineered to ensure that they can withstand the forces attendant to the transportation of the home coupled to a temporary transportation frame, and are appropriately modified to be sited on a permanent foundation. These recommended definitions establish three options for siting a manufactured home: with the transportation frame removed; with the transportation frame permanently attached; and, with the frame integrated into the chassis. In each case, the permanent fabricated substructure of the home is the permanent chassis, required by the definition of "manufactured home" in the Act.

Appendix A

MHI's Proposal is Consistent with Congressional Actions that Recognize Manufactured Housing as an Important Source of Affordable Housing.

Since the Act was passed in 1974, Congress has taken several actions to recognize the evolution of the product from one that was in fact "mobile," to many now designed as permanent housing. In 1980, Congress changed the terminology in the Act from "mobile" to "manufactured". The FHA(203)(b) program was modified to make HUD code housing eligible under the traditional FHA single family mortgage program. The same is true for the Veterans Home Loan Guaranty Program. Lending institutions, including the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association have approved long term mortgage loans for permanently sited manufactured homes. Most recently, when Congress passed the National Affordable Housing Act and revised its national housing policy, it specifically included manufactured housing in its definition of "housing", (Section 104(8), P.L. 101-625).

MHI's Proposal is Consistent with HUD's and Congress' Goals to Encourage Innovation

In defining the term "manufactured home" in the Act, Congress clearly stated that they would be designed to be used as a dwelling with or without permanent foundations. Congress did not wish to limit advances in technology and home design intended to meet this definition.

The HUD Manufactured Home Construction and Safety Standards (MHCSS) at 24 CFR 3280.904 contains a note which further illustrates the Department's intent to encourage innovation in the area of transportation of manufactured homes. The note states:

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> While the majority of manufactured homes utilize a fabricated steel frame assembly, upon which the manufactured home structure is constructed, it is not the intent of the standard to limit innovation. Therefore, other concepts, such as integrating the frame function into the manufactured home structure, are acceptable provided that such design meets the intent and requirements of this part.

This provision of the standards recognizes that "other concepts" may be acceptable to the Department.

In fact HUD has already revised its definition of "chassis" when it authorized the removal of certain transportation components when manufactured homes are permanently sited. Pursuant to Title II of the National Housing Act, 12 U.S.C. Stat. 1701 *et. seq.*, HUD has implemented regulations which provide for the issuance of FHA mortgage insurance for permanently site manufactured homes. In order to qualify for such insurance HUD has required that these homes be placed on site-built permanent foundations and that they have all of their transportation components removed from them, "the towing hitch or running gear, which including axles, brakes, wheels and other parts of the chassis that operate only during transportation. . . ." (24 CFR Section 203.43f).

The MHI Proposal is Consistent with HUD Objectives to Improve Quality and Durability of Manufactured Homes.

The Act provides that HUD must set standards for manufactured homes that meet the "highest standards of quality and

durability". Over the past several years the Department has taken a number of steps to meet this objective, including efforts to encourage proper installation of manufactured homes. There is a general consensus among HUD officials, industry, and consumers that initiatives to encourage the permanent installation of manufactured homes would enhance the quality and durability of manufactured homes. MHI's proposal would encourage the design and construction of permanently sited residential manufactured homes on residential foundations, and thereby add to the home's durability.

Additionally, MHI's proposal is consistent with HUD's efforts to recognize and encourage the utilization of permanently sited manufactured housing which is treated as real estate, by authorizing the use of manufactured housing in its FHA 203(b) loan program. In fact, HUD's regulations under the FHA 203(b) program recognize that a manufactured home, in accordance with the HUD Act's definition, may have certain transportation components removed.

The MHI Proposal Furthers Secretary Kemp's Objectives to Reduce Regulatory Barriers to Affordable Housing.

A primary initiative of Secretary Kemp has been to empower people through home ownership. The Secretary has taken a leadership role in seeking the removal of regulatory barriers to affordable housing by encouraging state and local governments to remove such barriers. He can demonstrate his commitment to this laudable goal by removing a significant federal barrier within the HUD Manufactured Housing Program.

Additionally, this change would enhance affordability by reducing the cost of manufactured homes designed and

constructed for placement on permanent foundations. It will foster greater acceptance of manufactured housing in many residential neighborhoods and urban infill lots by allowing builders to design and construct manufactured homes that are more compatible with other single-family residential housing.

The MHI Proposal is Consistent with the President's Initiative to Require Federal Agencies to Review and Revise Federal Requirements that Impede Economic Growth

President Bush, in his State of the Union Address in January, directed all federal agencies to undertake a review and reform of existing and new initiatives to reduce regulatory barriers that impede economic growth.

Revising the MHCSS regulations to permit a removable transportation frame would enhance consumer acceptance of manufactured housing, and expand the supply of affordable housing to create more jobs and expand the economy.

A recent report by an independent business research firm, The Freedonia Group, confirmed that growth in the manufactured housing industry will be hindered because HUD's current requirement that prohibits the design and construction of permanently sited manufactured homes utilizing a removable transportation frame. A study by the CATO Institute, "Housing Policy in New York, Myth and Reality", reached a similar conclusion.

Summary of MHI's Proposal

For these reasons, we believe designing and constructing a home with a permanent fabricated substructure as a permanent chassis,

with the transportation frame permitted to be removed is within the statutory definition of a manufactured home under the Act. There is no statutory prohibition against amending the HUD MHCSS in Subpart J "Transportation" to permit the removal of the transportation frame. The "chassis" of the home is the permanent fabricated substructure which is moved from factory to home site on a permanent temporary transportation frame, or with the frame integrated therein.

MHI - 6/17/92

Appendix A

INDUSTRY POSITION, RATIONALE, AND PROPOSAL

SUBPART J
SECTION 3280.902(a), (b), (c) & (f)

TITLE: Transportation Definitions

DESCRIPTION OF PROPOSAL: MHI hereby proposes that HUD modify four transportation definitions (and make other corresponding revisions to Subpart J and IB-J-1-76) to encourage innovative designs and facilitate permanent siting of homes as permitted by the Act.

INDUSTRY PROPOSAL:

Revise four of the transportation definitions, as follows:

> (a) "Chassis" means the . . . *permanent fabricated substructure of the manufactured home, which provides support on site, and during transportation when coupled to a permanent or temporary transportation frame (which alternatively may be integrated into the substructure).*
>
> (b) "Drawbar and coupling mechanism" means the rigid assembly, (usually an "A" frame) upon which is mounted a coupling mechanism, which connects the manufactured home's *transportation* frame to the towing vehicle.
>
> (c) . . . .

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"Transportation frame" means the transportation system for the manufactured home which is coupled either permanently or temporarily to the chassis and provides partial support during transportation, and on site if required by the approved design to be either permanently attached to or integrated into the manufactured home chassis; and acts as a platform for securement of the running gear assembly, the draw bar, coupling mechanism and transportation lights.

(f) "Transportation system," (Same as . . . *transportation frame,* above).

RATIONALE:

The current definitions are based upon industry practice during the early to mid-1970s. In the absence of a legislative definition of "chassis" and "transportation frame," HUD prepared the current definitions in 1975. To properly update Subpar. J, the proposed definitional changes will permit innovative designs (mentioned in the note at 3280.904(a)) and facilitate the siting of homes on permanent foundations, now permitted .n the Act (42 U.S.C. 5402(6)).

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INDUSTRY POSITION, RATIONALE, AND PROPOSAL

SUBPART J
SECTION 3280.904(a) & (p)

TITLE: Specific Requirements for Designing the Transportation System

DESCRIPTION OF PROPOSAL:

MHI hereby proposes that HUD make revisions to this section, in line with MHI's proposed revisions to 3280.902.

INDUSTRY PROPOSAL:

Revise three paragraphs and interpretative Bulletin J-1-76, to bring them in harmony with definitional changes proposed for 3280.902, as follows:

> (a) General. The entire system (*transportation* frame, drawbar and coupling mechanism, running gear assembly, and lights) sha!l be designed and constructed as an integrated, balanced and durable unit which is safe and suitable for its specified use during the intended *use*. . . . In operation, the transportation system (supporting the manufactured home structure and its contents) shall effectively respond to the control of the braking, while traveling at applicable towing vehicle in terms of tracking and highway speeds and in normal highway traffic conditions.

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(NOTE: While the majority of manufactured homes utilize a fabricated steel frame assembly, upon which the manufactured home structure is constructed, it is not the intent of this standard to limit innovation. Therefore, other concepts, such as integrating the frame function into the manufactured home structure, are acceptable provided that such design meets the intent and requirements of this part).

(b) Specific requirements — (1) Drawbar. The drawbar shall be constructed of sufficient strength, rigidity and durability to safely withstand those dynamic forces experienced during highway transportation. If shall be securely fastened to the manufactured home *transportation* frame by either a continuous weld or by bolting.

* * * * * * * * *

(3) . . . *Transportation frame.* The . . . *transportation frame* in conjunction with the manufactured home structure, shall be designed and constructed to effectively sustain the designed loads consisting of the dead load plus a minimum of 3 pounds per square foot floor load, (example: freestanding range, refrigerator and loose furniture) and the superimposed dynamic load resulting from highway movement but shall not be required to exceed twice the dead

load. The integrated design shall be capable of insuring rigidity and structural integrity of the complete manufactured home structure and to insure against deformation of structural or finish members during the intended life of the home.

Revise Interpretative Bulletin J-1-76, to bring it into harmony with proposed revisions to 3280.902 and .904, by striking the word "chassis" where it appears in Sections A and B in eight places and substituting the phrase "transportation frame;" and, by striking the word "mobile" where it appears throughout the bulletin and substituting the word "manufactured."

RATIONALE: See 3280.902(a), (b), (c) and (f) above.